

Federal Court



Cour fédérale

Date: 20220513

**Dockets: IMM-6356-20
IMM-149-21**

Citation: 2022 FC 719

Ottawa, Ontario, May 13, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ANJA SIMIC

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Anja Simic is citizen of Serbia and Croatia. She seeks judicial review of a decision by a senior immigration officer [Officer] to refuse her request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds (IMM-149-21). She also

seeks judicial review of a decision by another immigration officer not to extend her temporary visitor status in Canada (IMM-6356-20).

[2] The central theme of Ms. Simic's request for H&C relief was her experience of discrimination in Serbia and her desire to remain in the one place where she feels accepted. The Officer failed to "meaningfully grapple with key issues or central arguments" advanced in support of her H&C application. The application for judicial review in IMM-149-21 must therefore be allowed.

[3] The application for judicial review in IMM-6356-20 must be dismissed on the ground that it is moot.

II. Background

[4] Ms. Simic is 26 years old. She was born and raised in Serbia, where her parents continue to live. Ms. Simic's parents are both ethnic Serbs. They were born in Croatia and lived there until they moved to Serbia as a result of conflict in the region during the 1990s. Ms. Simic and her parents speak with a pronounced Croatian accent, and this has hindered their integration in Serbia.

[5] Ms. Simic's sister and brother-in-law are Canadian citizens. They were granted refugee status in Canada in 2011 due to the brother-in-law's well-founded fear of persecution in Croatia.

[6] Ms. Simic first arrived in Canada in 2015 with a temporary resident visa [TRV]. She stayed with her sister from February 2015 to August 2015, and again from January 2016 to April 2017. She returned to Canada in November 2017, and has been here since.

[7] Ms. Simic was granted extensions of her temporary resident status until November 10, 2018, May 25, 2019 and May 31, 2020 pursuant to s 181(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. In May 2020, she submitted another request for an extension of her status until May 31, 2021, but this was refused.

[8] A multiple-entry TRV permits a foreign resident to remain in Canada for a continuous six-month period (IRPR, s 183(2)). Ms. Simic's TRV remains valid until September 21, 2022.

[9] In her request for H&C relief, Ms. Simic described being constantly bullied while she was growing up because of her distinct accent and her status as a child of refugees. She provided documentary evidence about the treatment of Serbs of Croatian origin, and the political situations in both Serbia and Croatia.

[10] Although she has a Croatian passport, Ms. Simic says she has no ties to that country and has never lived there. Many members of her extended family now reside in Canada, and she says this is the first place she has ever felt accepted. She hopes to attend either college or university, and further her education in Canada.

III. Issue

[11] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[12] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The Court must consider both the outcome of the administrative decision and its underlying rationale (*Vavilov* at para 15).

[13] The Officer considered Ms. Simic's establishment in Canada, including her ties to family and friends, and the hardship she would potentially face if she returns to Serbia or Croatia. The Officer was not satisfied that Ms. Simic's circumstances merited the extraordinary and discretionary relief contemplated by s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[14] Ms. Simic relies on Justice Henry Brown's very recent decision in *Elbeibas v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 468, in which he applied the following

principle from *Vavilov* to judicial review of a refusal of H&C relief under s 25(1) of the IRPA (at para 12):

[...] a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[15] The Officer accepted that Ms. Simic has a degree of establishment in Canada, noting that her sister and brother-in-law live here and are both Canadian citizens. The Officer acknowledged that Ms. Simic has numerous extended family members in Canada, including uncles, aunts, and cousins, as well as family friends. Many provided letters in support of her request to remain in Canada.

[16] The Officer concluded that phone calls, and visits in compliance with the valid TRV, would be sufficient for Ms. Simic to maintain a relationship with her family in Canada. With respect to Ms. Simic's experience of discrimination in Serbia, the Officer found as follows:

Moreover, I find that there is little information before me to indicate that she is someone who would stand out as an outsider. While she may have adopted her parents' Croatian accent at a young age, as a person born, raised and, educated in Serbia, I find that she would have [*sic*] eventually assimilate to the Serbian language (or accent), just as her parents assimilated to the Croatian accent despite their Serbian background.

[17] There are a number of difficulties with this assessment. Ms. Simic lived in Serbia for more than 20 years before she relocated to Canada in 2017. She did not “assimilate to the Serbian language (or accent)” during that time, and there is no reason to think she would do so now. Nor did her parents assimilate to a Croatian accent. They were born and raised in that country, and fled to Serbia in the 1990s as refugees. Like their daughter, they continue to be viewed as outsiders in Serbia.

[18] The Officer observed that Ms. Simic’s TRV would facilitate her visits to Canada while her application for permanent residence was processed in the prescribed manner. Counsel for Ms. Simic describes this observation as incoherent. There is no relative who can sponsor Ms. Simic for permanent residence from outside Canada; nor is she likely to qualify as a skilled worker or member of another immigrant class. Furthermore, the delays in processing applications for permanent residence from outside Canada are considerable.

[19] In *Paul v Canada (Citizenship and Immigration)*, 2013 FC 1081 [*Paul*], an elderly couple applied for H&C relief so they could join their children in Canada. The usual immigration processes would have taken up to seven years. The officer found that H&C relief was not warranted, because the applicants’ Canadian children could visit them in India. Justice Douglas Campbell held that this was “evidence of a failure on the part of the Officer to recognize the core reason for the making [of] the s. 25 application: it is not about visits, it is about the urgent need to provide permanent residence in Canada” (*Paul* at para 5).

[20] The Respondent seeks to distinguish *Paul* on the basis that the case concerned an elderly couple who might not live long enough to benefit from the usual immigration processes. While this particular concern does not arise in Simic's case, the underlying principle is the same.

[21] The central theme of Ms. Simic's request for H&C relief was her experience of discrimination in Serbia and her desire to remain in the one place where she feels accepted. She says that she feels "at home" in Canada because she is surrounded by family and friends who provide emotional and financial support. More than 200 members of Ms. Simic's extended family have left or fled Serbia and now live in and around the Toronto area. The Officer failed to "meaningfully grapple with key issues or central arguments" advanced in support of Ms. Simic's H&C application, much in the same way as occurred in *Paul*.

[22] The application for judicial review in IMM-149-21 must therefore be allowed.

[23] The application for judicial review in IMM-6356-20 concerns a decision by another immigration officer not to extend Ms. Simic's temporary visitor status in Canada. Ms. Simic sought to remain in Canada pending a decision on her H&C application. The officer found she had been in Canada for a sufficient length of time to satisfy the original purpose of her visit, which was to spend time with her family. The officer was not satisfied that she continued to be a genuine temporary resident who would leave Canada at the end of her authorized stay. The officer noted that Ms. Simic had submitted an H&C application, but this had not received initial stage approval.

[24] The decision by the immigration officer not to extend Ms. Simic's temporary visitor status pending a decision on her H&C application became moot when the H&C decision was made on January 2, 2021, or alternatively on May 31, 2021, when the extension would have expired. Ms. Simic argues that overturning the refusal of her request to remain in this country will allow her to demonstrate that she has consistently complied with Canada's immigration laws, which may be an important consideration in the redetermination of her H&C application.

[25] I am not persuaded that the immigration officer committed a reviewable error in refusing Ms. Simic's fourth request for an extension of her temporary residence in Canada. Nor am I convinced that overturning the decision would have the effect of regularizing Ms. Simic's status in Canada retroactively, or that there would be any other practical utility in deciding the matter (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353).

[26] The application for judicial review in IMM-6356-20 must therefore be dismissed on the ground that it is moot.

V. Conclusion

[27] The application for judicial review in IMM-149-21 is allowed, and the matter is remitted to a different immigration officer for redetermination.

[28] The application for judicial review in IMM-6356-20 is dismissed on the ground that it is moot.

[29] No party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in IMM-149-21 is allowed, and the matter is remitted to a different immigration office for redetermination.
2. The application for judicial review in IMM-6356-20 is dismissed on the ground that it is moot.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-6356-20
IMM-149-21

STYLE OF CAUSE: ANJA SIMIC v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: APRIL 5, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MAY 13, 2022

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